

<p style="text-align: right;">Page 142</p> <p>1 MR. RUSHFIELD: Which page is this on?</p> <p>2 MR. CARMAN: This is page 5 of Exhibit</p> <p>3 11.</p> <p>4 MR. RUSHFIELD: These pages aren't</p> <p>5 numbered, are they?</p> <p>6 MR. CARMAN: It's PDF page 5.</p> <p>7 MR. RUSHFIELD: Oh, okay. Okay. I'm</p> <p>8 there. Where are you directing his</p> <p>9 attention?</p> <p>10 MR. CARMAN: It is the paragraph that</p> <p>11 begins "So, I called Health Quest."</p> <p>12 MR. RUSHFIELD: I'm there. Go ahead.</p> <p>13 Q. I will read the whole thing. This</p> <p>14 paragraph reads, "So, I called Health Quest</p> <p>15 Vigent Care in Wappinger Falls at 845-297-2511</p> <p>16 and asked to speak with Dr. Jose Soha. No</p> <p>17 doctor by that name works there. They have</p> <p>18 never heard this name." Do you see that?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. In the next paragraph, Ms. Combier</p> <p>21 asks that you explain that, correct?</p> <p>22 A. Yes.</p> <p>23 Q. Did you ever provide the requested</p> <p>24 explanation to Ms. Combier?</p> <p>25 A. Our communication was I emailed Ms.</p>	<p style="text-align: right;">Page 143</p> <p>1 Melton. Ms. Combier communicated with Kate Reid</p> <p>2 directly. She was her advocate.</p> <p>3 Q. So at least as of the date of Exhibit</p> <p>4 11, which is February 16, 2021, you were aware</p> <p>5 that the name provided on the health disclosure</p> <p>6 authorization form was incorrect; is that right?</p> <p>7 A. Correct.</p> <p>8 Q. Did you ever reissue the health</p> <p>9 authorization form with the correct doctor's</p> <p>10 name?</p> <p>11 A. Ultimately, Ms. Combier informed Ms.</p> <p>12 Reid that Ms. Melton was not interested in going</p> <p>13 to the 913, but no, I did not resend it out</p> <p>14 again.</p> <p>15 Q. So you never corrected the doctor's</p> <p>16 name on the authorization form, right?</p> <p>17 A. Correct.</p> <p>18 Q. And you never corrected the</p> <p>19 psychotherapy notes error on the authorization</p> <p>20 form, correct?</p> <p>21 A. Correct.</p> <p>22 Q. I believe you just mentioned that it</p> <p>23 is your understanding that Ms. Combier informed</p> <p>24 Ms. Reid that Ms. Melton did not intend to</p> <p>25 submit to the 913 examination; is that right?</p>
<p style="text-align: right;">Page 144</p> <p>1 A. That's correct.</p> <p>2 Q. What is that belief based on?</p> <p>3 A. It was part of the record of the</p> <p>4 3020-a.</p> <p>5 Q. Was there an email that says that?</p> <p>6 A. There was a communication between the</p> <p>7 hearing officer, Ms. Combier and Kate Reid. I</p> <p>8 can't say if it was in a pretrial hearing or if</p> <p>9 it was an email, but that was stated during the</p> <p>10 process of the 3020-a.</p> <p>11 Q. And you were present for this hearing;</p> <p>12 is that right?</p> <p>13 A. Correct. And the district</p> <p>14 representative, so that issue was discussed</p> <p>15 while I was present.</p> <p>16 Q. What was the date of that hearing? Do</p> <p>17 you recall?</p> <p>18 A. I don't have a specific date in mind.</p> <p>19 Q. Do you have a best guess for when you</p> <p>20 think it was? Let me -- strike that.</p> <p>21 I'll ask it this way. Was it after</p> <p>22 February 16, 2021?</p> <p>23 A. Yes, absolutely.</p> <p>24 Q. Was it after April 1, 2021?</p> <p>25 A. When I --</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. The hearing where you --</p> <p>2 A. Right, correct.</p> <p>3 Q. Just so the record is clear, I'll ask</p> <p>4 the question comprehensively. Was the 3020-a</p> <p>5 hearing in which you believe Ms. Combier</p> <p>6 represented that Ms. Melton would not</p> <p>7 participate in the 913 examination, did that</p> <p>8 occur after April 1, 2021?</p> <p>9 A. The hearing itself happened absolutely</p> <p>10 after April 1, 2021 when I became aware of that</p> <p>11 conversation as being on the record. As to when</p> <p>12 that actual conversation was, I wasn't present</p> <p>13 for that, so I can't speak to the date of when</p> <p>14 the actual conversation took place or if it was</p> <p>15 in written form that I just don't have access</p> <p>16 to.</p> <p>17 Q. So my questions are going to be</p> <p>18 limited to the actual hearing where you have</p> <p>19 testified that you heard this agreement. Is</p> <p>20 that okay?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 A. And I --</p> <p>24 Q. I'm sorry. Could you repeat that?</p> <p>25 A. I just want to be as accurate as I can</p>

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1 be.

2 Q. Understood. I'm trying to just figure

3 out what the time frame was for when the hearing

4 took place where you heard this. We have

5 established that it was after April 1, 2021.

6 Was it after May 1, 2021?

7 A. I unfortunately -- I would look it up

8 on my calendar if I were at my office, but I'm

9 not. There was one date. I believe it was late

10 April. It may have been later than that, but I

11 believe that it was in late April. It was

12 definitely after April 1st.

13 Q. Between the time that you learned of

14 the mistakes on the health authorization form

15 and the time that you believed you learned that

16 Ms. Melton was refusing to participate in the

17 913 examination was at least two weeks, correct?

18 A. Correct.

19 Q. And it might be as much as six weeks,

20 correct?

21 A. Correct.

22 Q. I'm going to stop sharing this.

23 I'm sharing Exhibit 12 now. Just let

24 me know if you have any issue opening it. I'm

25 be happy to screen share.

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1 Q. I'll reask the question. The email

2 address next to where it says James Soha is

3 Walter.Soha@nuvancehealth.org; is that right,

4 Dr. Wade?

5 (Technical interruption.)

6 A. I heard the first part of the

7 question. Can you hear me?

8 Q. I can now. I'll ask it again.

9 A. I apologize.

10 Q. It's okay. Where it says "From," it

11 says Soha, James. Do you see that?

12 A. Yes.

13 Q. Okay. And the email address next to

14 that says Walter.Soha@nuvancehealth.org. Do you

15 see that?

16 A. I do.

17 Q. And it's your understanding that this

18 is the Dr. Soha that was referenced in your

19 email of Exhibit 8, correct?

20 A. Correct.

21 Q. And we see a fourth name here,

22 correct, Walter Soha; is that right?

23 A. Correct.

24 Q. All right. So I'm going to scroll

25 down to the first email in the chain. So this

1 (Plaintiff's Exhibit 12 was

2 marked for identification.)

3 A. It's not opening for me.

4 Q. Give me a moment to open it myself and

5 I will share my screen. Okay. Can you see

6 Exhibit 12?

7 A. Yes.

8 Q. Okay. So I will just quickly scroll

9 through so you can see what all is here. That's

10 it. Do you recognize Exhibit 12?

11 A. Yes. It's one of the emails that I

12 had sent to Kate Reid.

13 Q. And it's an email from you to Kate

14 Reid forwarding email correspondence between

15 yourself and Dr. -- somebody identified as James

16 Soha, correct?

17 A. Correct.

18 Q. And the email address next to James

19 Soha reads Walter.Soha@nuvancehealth.org; is

20 that right?

21 (Technical interruption.)

22 Q. Is that right, Dr. Wade? You might

23 have cut out. Dr. Wade?

24 A. I'm sorry. I cut out for a couple

25 minutes there.

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1 is an email from yourself to Dr. Soha, right?

2 A. Correct.

3 Q. And the subject is "Set up

4 appointment"?

5 A. Correct.

6 Q. And this is dated May 3, 2021, right?

7 A. Correct.

8 Q. Okay. And it reads, "Dear Dr. Soha,

9 Please provide me with contact information for

10 Ms. Melton or Ms. Combiar, her advocate to make

11 an appointment for the 913 physical examination.

12 We had called 845-297-2511. We were not able to

13 get through." Did I read that correctly?

14 A. Yes.

15 Q. When you say "we had called" that

16 phone number, who is "we"?

17 A. Me.

18 Q. Do you recall when you -- sorry. I

19 didn't mean to cut you off.

20 A. I called just to make sure that it was

21 a working number, but then Ms. Combiar had

22 informed Kate Reid as well. They had been going

23 back and forth about setting up the appointment.

24 Q. Ms. Combiar had informed you that she

25 called that number back in February, right?

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1 A. Correct.

2 Q. Do you recall when you attempted to

3 call Dr. Soha? Was that immediately after Ms.

4 Combier sent her message on February 16th or

5 sometime later?

6 A. It would have been after that letter.

7 I can't speak to exactly when. Just to make

8 sure that it was a correct number.

9 Q. And it was a correct number?

10 A. I was on hold for quite a while, but

11 it was their number as I remember.

12 Q. And when you say we were not able to

13 get through, you mean that you were on hold for

14 a while and eventually you just gave up and hung

15 up the phone?

16 A. Yes. That was my experience.

17 Q. And so this email is you asking Dr.

18 Soha for alternative or correct contact

19 information so that you can pass that along to

20 Ms. Melton and Ms. Combier, correct?

21 A. Correct.

22 Q. Just a moment. Was Ms. Melton ever

23 suspended without pay?

24 A. She was.

25 Q. Was Ms. Melton ever suspended with

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1 recommendation to the Board of Education

2 typically with the attorney's recommendation.

3 Q. Does suspending an employee without

4 pay require Board approval?

5 A. It does not for the purposes of not

6 going to a 913.

7 Q. So for purposes of someone who does

8 not go to a 913 examination, who decides whether

9 that person is suspended without pay?

10 A. It would be the district. Certainly

11 the superintendent would know and make that

12 decision in conjunction with recommendations

13 from the attorney.

14 Q. So it is the superintendent who

15 ultimately decides whether to suspend an

16 employee's pay for refusal to attend a 913

17 medical examination?

18 A. Correct.

19 Q. I'm going to share Exhibit 13. Let's

20 see if we can open this.

21 (Plaintiff's Exhibit 13 was

22 marked for identification.)

23 Q. Is this one working for you, Dr. Wade?

24 A. Yes, that worked.

25 Q. Good.

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1 pay?

2 A. The Board resolution that brought the

3 3020-a charges did not refer to her being

4 suspended.

5 Q. Okay. I understand that, but was Ms.

6 Melton ever suspended with pay?

7 A. I cannot find a written communication

8 where that was indicated.

9 Q. So to the best of your knowledge, Ms.

10 Melton was never suspended with pay?

11 A. Correct. I could not find that

12 indication where Ms. Melton was suspended with

13 pay.

14 Q. She was eventually suspended without

15 pay though, correct?

16 A. Correct.

17 Q. Okay. I'm going to stop sharing here.

18 MR. RUSHFIELD: Can you given me ten

19 seconds off the record, if I can go off the

20 record for a moment?

21 (Discussion off the record.)

22 Q. Dr. Wade, who makes the decision

23 whether an employee is suspended with or without

24 pay?

25 A. That would be the superintendent's

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1 MR. RUSHFIELD: I have it as well.

2 Q. Okay. Have you seen -- well, ignoring

3 the fact that the header on this is an email

4 from Ms. Melton to myself, have you seen the

5 substance of the email below that header before

6 today?

7 A. Yes.

8 Q. And what is that?

9 A. It's an email from myself to Ms.

10 Melton informing her that her pay was being

11 suspended.

12 Q. And what is the date of this

13 communication?

14 A. February 10th.

15 Q. I just want to quickly run through the

16 time line of events here. As shown in Exhibit

17 8, which I'm happy to pull up if you would like

18 to see it again, you informed Ms. Melton on

19 January 20th that she was to undergo a medical

20 examination pursuant to Section 913 and that Dr.

21 Soha's staff would be reaching out to her to

22 schedule the examination, correct?

23 A. Correct.

24 Q. Okay. And then on February 10th, you

25 again emailed Ms. Melton stating that you have

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1 not received the signed form to process the
 2 Section 913 to release documents to the district
 3 physician, correct?
 4 A. Correct.
 5 Q. On February 16th, as shown in Exhibit
 6 11, Ms. Combiar informed you that she was unable
 7 to locate Dr. Soha and that there were a variety
 8 of issues with the information provided in the
 9 913 authorization form, correct?
 10 A. Correct.
 11 Q. Did Ms. Combiar's email to you in any
 12 way alter your decision to suspend Ms. Melton's
 13 pay?
 14 A. We were working with Ms. Combiar,
 15 myself with Ms. Reid and Ms. Reid with Ms.
 16 Combiar, to try to ameliorate many of the
 17 concerns.
 18 Q. Was Ms. Melton being paid after
 19 February 10th?
 20 A. She was not.
 21 Q. So even after Ms. Combiar pointed out
 22 concerns regarding contact with Dr. Soha and the
 23 substance of the 913 authorization form, the
 24 district maintained its decision to suspend Ms.
 25 Melton's pay?

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1 Exhibit 11, that there are a variety of issues
 2 with what information was provided in the 913
 3 authorization form including --
 4 MR. RUSHFIELD: When you say "the 913
 5 authorization form," are you referring to
 6 the HIPAA release or something else?
 7 MR. CARMAN: Yeah, the release form.
 8 MR. RUSHFIELD: All right. That's why
 9 I objected to the form. Earlier you were
 10 referring to it as something different than
 11 what it is. You were referring to it as a
 12 913 authorization form, which would be a
 13 totally different thing.
 14 MR. CARMAN: The title of the document
 15 is Authorization. So when I refer to
 16 authorization, that's what I'm referring to.
 17 MR. RUSHFIELD: Just so we're clear,
 18 it's an authorization -- regardless of its
 19 accuracy, it's an authorization demanding
 20 production of health records. The 913
 21 authorization is actually the Board
 22 resolutions.
 23 Just so the record is clear, I suggest
 24 you refer to it differently than 913
 25 authorization.

1 MR. RUSHFIELD: Objection to form.
 2 You can answer.
 3 Q. I'm sorry. Could you say your answer
 4 again?
 5 A. Correct.
 6 Q. What was the justification for
 7 maintaining that decision to suspend Ms.
 8 Melton's pay after it learned of the errors in
 9 the articulated grounds for that decision?
 10 MR. RUSHFIELD: Objection to form.
 11 You can answer.
 12 (Technical interruption.)
 13 A. I'm back but you cut out.
 14 Q. Sorry.
 15 A. It was probably my phone.
 16 Q. I'll withdraw that last question and
 17 I'll start over.
 18 According to the email on February
 19 10th that is shown in Exhibit 13, the reason
 20 that Ms. Melton's pay is being suspended is that
 21 she has not returned the 913 authorization form
 22 to release documents, right?
 23 A. Correct.
 24 Q. And you learned six days after that,
 25 on February 16th, through Ms. Combiar's email on

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1 MR. CARMAN: Thank you.
 2 MR. RUSHFIELD: Thank you.
 3 Q. I don't know what the last question
 4 was, so I will go back. The reason provided to
 5 Ms. Melton on February 10th to justify
 6 suspending her pay was that she had failed to
 7 sign and return the form to process the Section
 8 913 to release the documents to the district
 9 physician, correct?
 10 A. Correct.
 11 Q. Okay. On February 16th, Ms. Combiar
 12 informed you that that document could not be
 13 signed and returned as is because she had
 14 attempted to and been unable to locate Dr. Soha,
 15 Dr. Jose Soha, who is identified on the
 16 Authorization for Use and Disclosure of
 17 Protected Health Information, correct?
 18 A. Correct.
 19 Q. After February 16th, when Ms. Combiar
 20 informed you of the issues with the form to
 21 authorize disclosure of health information, the
 22 district did not reverse its decision to suspend
 23 Ms. Melton's pay, correct?
 24 A. Correct.
 25 Q. Why did the district maintain its

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1 decision despite the fact that it had been
2 alerted to errors in the form that provided the
3 grounds for the suspension decision in the first
4 place?

5 A. Ms. Reid was asking her to go. Ms.
6 Combier had voiced that there was reluctance to
7 go. If we had gotten to a point where she had
8 agreed to go to an appointment, we would have
9 changed the form. Ultimately, Ms. Combier
10 informed Ms. Reid and the hearing officer that
11 Ms. Melton did not agree to go to the 913 and
12 understood that she would continue not to be
13 paid.

14 Q. So I'm sharing -- I'll go up to the
15 top so you can see it. This is Exhibit 11. I'm
16 going to scroll down. I'm going to direct you
17 to -- I'll highlight it for you so you can see
18 it -- this paragraph. So this paragraph reads,
19 "Finally, we will, after a doctor is appointed
20 to do the 913 evaluation, fill out an official
21 HIPAA form compliant with Federal regulations.
22 We believe the 'PHI' to be defective and
23 unusable for this matter. If this were in fact
24 an official HIPAA form it should be free from
25 any errors of any kind and Ms. Melton cannot be

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1 It's an inappropriate question. You're
2 relying on a document that he and I are
3 looking at which says after a doctor is
4 appointed to conduct the exam, she'll fill
5 out an official HIPAA form compliant with
6 federal regulations. There's nothing in
7 there that says she will submit to the 913
8 exam.

9 MR. CARMAN: All right. I'll rephrase
10 the question. I disagree with counsel's
11 objection, but I will rephrase the question
12 to avoid the issue.

13 MR. RUSHFIELD: Thank you.

14 Q. Does Ms. Melton state anywhere in this
15 exhibit that she is unwilling to submit to a 913
16 evaluation?

17 MR. RUSHFIELD: Objection to form.

18 The letter is from Combier, not Melton.

19 A. I do not read in the paragraphs that
20 are on the screen that Ms. Combier communicated
21 that she objects to the 913.

22 Q. In fact, Ms. Melton offers and
23 guaranties that she will be making an
24 appointment for herself for an evaluation
25 pursuant to Section 913, correct? And I can

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1 expected under these circumstances, to sign a
2 defective document in its current state."

3 Did I read that correctly?

4 A. Yes.

5 Q. So it's not true that Ms. Melton was
6 refusing to submit to any 913 evaluation, is it?

7 MR. RUSHFIELD: Objection. You can
8 answer.

9 A. Ultimately, that was the case.

10 Q. But at least as of February 16th, the
11 best information that you had, the most
12 up-to-date information was that Ms. Melton was
13 perfectly willing to submit to a 913 evaluation.
14 Her only request was that the paperwork be
15 entirely in order prior to doing so, right?

16 MR. RUSHFIELD: Objection to form.

17 That's not what it says.

18 Q. You can answer.

19 A. You cut out for part of that.

20 Q. On February 16th, the best information
21 that you had, the most up-to-date information
22 that you had, was that Ms. Melton was willing to
23 subject herself to a 913 examination, correct?

24 MR. RUSHFIELD: Counsel, you keep
25 saying that, but that's not what it says.

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1 direct you to the language if you like.

2 MR. RUSHFIELD: Why don't you show it
3 to him.

4 Q. Sure. This paragraph right here, "As
5 stated above, Ms. Melton will be making an
6 appointment herself for an evaluation pursuant
7 to Section 913, and we will inform you of the
8 doctor and date on or before March 1, 2021." Do
9 you see that?

10 A. She says that, yes.

11 Q. Do you know whether Ms. Melton, in
12 fact, made an appointment for herself to be
13 evaluated pursuant to Section 913?

14 A. The Section 913 directs the district
15 to choose the physician, so she could not choose
16 a physician of her own as part of the 913
17 process.

18 Q. Well, Ms. Combier conveniently
19 includes Section 913 up here, so we can look at
20 this and see what it says or at least see what
21 Ms. Combier was relying on.

22 So this says, in relevant part, "In
23 order to safeguard the health of children
24 attending the public schools, the board of
25 education or trustees of any school district or

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1 board of cooperative educational services shall
2 be empowered to require any person employed by
3 the board of education or trustees or board of
4 cooperative educational services to submit to a
5 medical examination by a physician or other
6 health care provider of his or her choice or the
7 director of school health services of the board
8 of education or trustees or board of cooperative
9 educational services, in order to determine the
10 physical or mental capacity of such person to
11 perform his or her duties."

12 Did I read that correctly?

13 A. Yes.

14 Q. So when it says "his or her choice,"
15 what do you understand those words to mean?

16 A. That it would be the choice of the
17 patient.

18 Q. So Section 913, at least as presented
19 here as copied by -- let me back up for a
20 second.

21 Do you have any reason to believe that
22 Ms. Combiar miscopied or misrepresented Section
23 913 here?

24 A. No, I have no reason to believe that.

25 Q. Okay. So Section 913 authorizes the

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1 pursuant to Section 913, then I propose that we
2 discuss the proper doctor for the examination
3 but not Dr. Jose Soha." Do you see that?

4 A. Yes.

5 Q. So you would agree that at most, Ms.
6 Melton is refusing to submit to an examination
7 by a specific doctor, correct?

8 (Technical interruption.)

9 Q. Dr. Wade?

10 A. I'm sorry. I cut out again.

11 Q. Did you hear my question?

12 A. No.

13 Q. Okay. Based on this statement, you
14 would agree that at most Ms. Melton is refusing
15 to submit to a 913 examination performed by Dr.
16 Jose Soha, correct?

17 MR. RUSHFIELD: Objection to form.

18 You can answer.

19 A. I agree that this sentence says that
20 Ms. Combiar and what ultimately became Ms. Reid
21 would be in a conversation --

22 (Technical interruption.)

23 Q. I think you cut out. I heard "would
24 be in a conversation."

25 A. I cut in and out again, but I'm here

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1 board to direct a person to submit to a physical
2 examination, but it allows at least under some
3 circumstances for the doctor performing that
4 examination to be a doctor of the patient's
5 choice, correct?

6 A. That's what this says, yes.

7 Q. Okay. So let's go back down where we
8 were looking before, and it says, "Ms. Melton
9 will be making an appointment herself for an
10 evaluation pursuant to Section 913, and we will
11 inform you of the doctor and date on or before
12 March 1, 2021."

13 A. Yes, I see that.

14 Q. In the district's opinion, was Ms.
15 Melton's determination to make an appointment
16 for herself at a doctor of her choosing in
17 violation of Section 913?

18 A. No, if what was written above is
19 accurate.

20 Q. I'm going to highlight some language
21 for you again, and I will read it in as well.
22 All right. This is on PDF page 4 of Exhibit 11,
23 a statement from Ms. Combiar that says, "After
24 March 1 if Ms. Melton cannot get an appointment
25 with a medical professional to do an evaluation

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1 right now.

2 Q. All right. I will try and ask that
3 again. Would you agree that at most Ms. Melton
4 is refusing to subject herself to a Section 913
5 examination by Dr. Jose Soha specifically?

6 MR. RUSHFIELD: Objection to the form.

7 You can answer.

8 A. In this sentence, yes.

9 Q. I'm going to scroll back up here to
10 Section 913.

11 A. I can't hear anything.

12 Q. Let me share. Can you see Exhibit 11?

13 A. The 913 process?

14 Q. Yes.

15 A. Yes.

16 Q. I don't know if you answered my last
17 question, so I'm going to ask it again. Section
18 913 places the power to order employees be
19 subjected to a medical examination in the Board
20 of Education, correct?

21 A. Yes.

22 Q. Did the Board of Education ever
23 appoint Dr. Jose Soha as the physician to
24 perform Ms. Melton's 913 examination?

25 A. At the annual meeting every year, they

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1 appointed that practice as the district
2 physician.

3 Q. I want to make sure I understood that.
4 There's an annual meeting that the Board of
5 Education has every year, correct?

6 A. Correct.

7 Q. And at that meeting, they hold a vote
8 to designate who will perform Section 913
9 evaluations?

10 A. It's an entire contract, so whether
11 his name is listed or the Nuvance Health is
12 listed, but there are all kinds of things that
13 the district physician provides.

14 Q. And is there some sort of minutes or
15 memorialization of this agreement?

16 A. There would be a contract that they
17 approve that would be in the Board minutes, yes.

18 Q. Okay.

19 MR. CARMAN: Mr. Rushfield, to the
20 extent such contract exists and has not been
21 produced, we'd request that it be produced.

22 MR. RUSHFIELD: Dr. Wade, are Board
23 minutes in the Poughkeepsie School District
24 published on their website?

25 THE WITNESS: They are. If you go to

1 the Board page, you would click on Board
2 docs, and you could retrieve any document.

3 MR. RUSHFIELD: And this contract
4 you're referring to, would that be on the
5 website as well?

6 THE WITNESS: It should be an
7 attachment on the actual Board meeting.

8 MR. RUSHFIELD: So what I'm saying,
9 Counsel, is it's a public document. You
10 could probably see it for every year by
11 simply going on the website.

12 MR. CARMAN: I'm confused. Are you
13 saying that it's burdensome for the district
14 to produce its own Board minutes?

15 MR. RUSHFIELD: No. I could do the
16 same thing you could do. What I will do is
17 go to the website and I'll probably forward
18 you the reference on the website. You could
19 do it just as well as I could, but I could
20 do it. Actually, anybody can do it.

21 MR. CARMAN: Other than the fact that
22 I'm limited counsel for purposes of
23 depositions and not handling written
24 discovery, if you could do that, that would
25 be appreciated.

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1 MR. RUSHFIELD: Sure. Okay. What is
2 it exactly that you're requesting?
3 Apparently, there's a contract and --
4 there's a meeting every year and apparently
5 this contract is renewed every year, so
6 which year do you want?

7 MR. CARMAN: Well, the year during
8 which Ms. Melton's 913 was ordered, so 2021.
9 I don't know if it's school year based or if
10 it's calendar year. I don't have that
11 information.

12 MR. RUSHFIELD: If it's the meeting
13 I'm thinking about, these contracts are
14 probably -- the Board meeting we're probably
15 talking about is probably in June so it
16 would be June of 20 --

17 THE WITNESS: It would be July of
18 2020.

19 MR. RUSHFIELD: July of 2020 for the
20 2020-2021 school year. So you want this for
21 the 2020-2021 school year, Counsel?

22 MR. CARMAN: Yes, please.

23 MR. RUSHFIELD: So you want Board
24 minutes, re district physician and copy of
25 contract, right?

1 MR. CARMAN: Yes.

2 MR. RUSHFIELD: Okay. Got it. You
3 can move on. I can pull that for you.

4 MR. CARMAN: Thank you.

5 MR. RUSHFIELD: No problem.

6 BY MR. CARMAN:

7 Q. All right. I'm going to share the
8 next exhibit. Was somebody else -- never mind.
9 (Plaintiff's Exhibit 14 was
10 marked for identification.)

11 Q. I have shared Exhibit 14. Dr. Wade,
12 let me know if you have trouble opening that.

13 A. Yep, I'm having trouble opening it.

14 Q. Can you see Exhibit 14?

15 A. Yes.

16 Q. All right. So Exhibit 14, this is an
17 email from Betsy Combier to Ms. Melton and the
18 subject line is Forward: Forward: Medical
19 Director.

20 A. Uh-huh.

21 Q. And below there is a forwarded message
22 that is from Kate Reid to Betsy Combier, and
23 it's dated April 30, 2021. And that email
24 reads, "Good morning, Ms. Combier: Below is the
25 contact information for the District Physician.

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1 We have advised Dr. Soha to expect Ms. Melton to
2 schedule her 913 examination. Please arrange
3 for Ms. Melton to be examined by Dr. Soha at her
4 earliest convenience and to provide us with the
5 authorization we previously provided her." Did
6 I read that correctly?

7 A. Yes.

8 Q. I will scroll down a little further.
9 And the forwarded information from Ms. Reid's
10 email is an email from yourself to Ms. Reid; is
11 that correct?

12 A. Correct.

13 Q. And the contents of that email is an
14 email address and two phone numbers for Dr.
15 James Soha, correct?

16 A. Correct.

17 Q. The first thing I want to talk about
18 here is the second sentence of Ms. Reid's email
19 where it says, "We have advised Dr. Soha to
20 expect Ms. Melton to schedule her 913
21 examination." Do you see that?

22 A. Yes.

23 Q. Now, in your original email to Ms.
24 Melton regarding the 913 that was entered as
25 Exhibit 8, the instructions were that Dr. Soha

1 would be reaching out to Ms. Melton, correct?

2 A. Correct.

3 Q. And so this represents a change in
4 those instructions, right?

5 A. Correct.

6 Q. Okay. And this email was sent on
7 April 30th, correct?

8 A. Correct.

9 Q. That's more than two months after Ms.
10 Combier had already informed you that she had
11 already attempted to contact Dr. Soha's office
12 and was told that there was no such doctor at
13 the phone number provided, correct?

14 MR. RUSHFIELD: Objection.

15 A. Correct.

16 Q. What was the answer?

17 A. Correct.

18 Q. Okay. I will just scroll down
19 quickly. And one of the phone numbers provided
20 by you to Ms. Reid is 845-297-2511. Do you see
21 that?

22 A. I do.

23 Q. And do you recall from Exhibit 11,
24 which was Ms. Combier's email to yourself where
25 she informed you that she had attempted to

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1 contact Dr. Soha, do you recall is that the same
2 phone number that she listed as having called?

3 A. I don't recall.

4 Q. Well, I can pull that up for you very
5 quickly. All right. I'm going to highlight a
6 number here. This is Exhibit 11, Ms. Combier's
7 email to you where she says, "So, I called
8 Health Quest Vigent Care in Wappinger Falls at
9 845-297-2511." Do you see that?

10 A. Yes.

11 Q. And that is the same phone number as
12 the first phone number provided in Exhibit 14,
13 right?

14 A. Yes.

15 Q. Okay. And that's also the same phone
16 number that you called when you were attempting
17 to get in contact with Dr. Soha as reflected in
18 Exhibit 12, correct?

19 A. Correct.

20 Q. And where you previously testified
21 that you were on hold for some time and were not
22 able to get through, right?

23 A. Correct.

24 Q. Okay. Just to be clear, all of this
25 back and forth where Ms. Combier and Ms. Reid

1 were discussing the contact information for Dr.
2 Soha, Ms. Reid provided that contact information
3 on April 30th, all this is taking place while
4 Ms. Melton's pay is suspended, correct?

5 A. Correct.

6 Q. Did the district believe on April 30th
7 when it provided or had Ms. Reid provide this
8 information that Ms. Melton was refusing to
9 submit to an examination from Dr. Soha?

10 A. I know that Ms. Reid and Ms. Combier
11 were conversing back and forth and ultimately
12 Ms. Combier informed Ms. Reid that she would
13 not.

14 Q. Okay. Well, would the district have
15 given the contact information to Ms. Melton and
16 instructed her to contact Dr. Soha to schedule
17 her appointment if Ms. Combier had already
18 represented that Ms. Melton would not be doing
19 so?

20 A. I think that we -- you know, it was a
21 process where we would provide the information
22 ultimately. Whether Ms. Melton chose to utilize
23 it or not, we may still have provided it. And I
24 don't know the date where ultimately Ms.
25 Combier, the hearing officer and Ms. Reid

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1 discussed this issue. I don't know the date of
2 that.

3 Q. Right. That's what I'm trying to get
4 at here is if Ms. Combier had already informed
5 the district that Ms. Melton was refusing to
6 submit to a 913 examination by Dr. Soha, would
7 the district still provide the contact
8 information and an instruction that Ms. Melton
9 schedule her 913 examination?

10 A. I mean, we may have anyway, but I'm
11 not representing that's what we did because I
12 don't know the actual date when Ms. Combier
13 stated -- I mean, it's very likely that it was
14 after that.

15 Q. But you don't know, right?

16 A. Right, I don't know.

17 Q. Okay. Do you know if Ms. Combier
18 responded to Ms. Reid's email stating that Ms.
19 Melton would not submit to the 913 examination
20 by Dr. Soha? And when I say "Ms. Reid's email,"
21 I mean this email of April 30, 2021.

22 A. I do not know.

23 Q. Okay. I'm going to quickly go back
24 here to Exhibit 11. I just have a few more
25 questions on this. This is Exhibit 11. It's up

1 on the screen, and just as a reminder, this is
2 the email from Ms. Combier to yourself on
3 February 16th where she informs you that she
4 attempted to contact Dr. Soha and that she has
5 not received any communication from Dr. Soha's
6 staff.

7 Is it your opinion -- let me rephrase
8 that. Do you think that somebody would
9 affirmatively reach out --

10 (Technical interruption.)

11 A. I apologize.

12 Q. Sorry. Are you there?

13 A. I cut out. I'm sorry.

14 Q. Okay. Can you hear me now?

15 A. I can, yeah.

16 Q. Do you think that somebody would
17 affirmatively reach out to you and attempt to
18 contact -- strike that.

19 If Ms. Melton were refusing to submit
20 to a 913 examination, would you expect her to
21 affirmatively attempt to reach out to that
22 doctor?

23 A. I'm not aware that Ms. Melton reached
24 out to that doctor. I believe it was
25 Mrs. Combier.

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1 Q. Okay. Can we assume for this
2 conversation that Ms. Combier is acting on Ms.
3 Melton's behalf as her representative? I
4 believe you called her her representative
5 multiple times in your testimony.

6 A. Yes.

7 MR. RUSHFIELD: You're asking the
8 witness to make a presumption for the
9 purpose of answering your questions?

10 MR. CARMAN: Yes.

11 MR. RUSHFIELD: I will be objecting to
12 the form.

13 MR. CARMAN: Fair enough.

14 MR. RUSHFIELD: You can ask them
15 certainly.

16 A. I believe that Ms. Combier was
17 representing Ms. Melton and was trying to
18 facilitate the process. It is not clear to me
19 that Ms. Melton would agree to go to the 913
20 examination.

21 Q. Okay. Well, would you expect a person
22 who has no intention of going to a 913
23 examination to reach out or have someone reach
24 out on their behalf to the designated physician?

25 MR. RUSHFIELD: Objection to form. Go

1 ahead.

2 A. I believe that Ms. Combier was trying
3 to facilitate an examination.

4 Q. Do you believe that Ms. Melton was
5 refusing to attend that examination?

6 A. Ultimately that was what Ms. Combier
7 communicated, yes.

8 Q. To you?

9 A. To the hearing officer and to Ms.
10 Reid.

11 Q. But not to you?

12 A. Not to me, no.

13 Q. All right. If I could, I'm going to
14 stop sharing this here.

15 One last thing here, and then I'll ask
16 for a quick break just to collect my thoughts.
17 I'm trying to wrap up here somewhat soon, but
18 I've got just a couple more.

19 I'm going to show you again Exhibit
20 14, which is the April 30th email from Ms. Reid
21 to Ms. Combier. The last sentence reads,
22 "Please arrange for Ms. Melton to be examined by
23 Dr. Soha at her earliest convenience and to
24 provide us with the authorization we previously
25 provided to her." Do you see that?

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1 A. I do.

2 Q. Do you know what authorization she's

3 referring to?

4 A. I would expect it would be the release

5 form.

6 Q. Okay. And to be clear, that's the

7 release form that erroneously designated

8 psychotherapy, psychotherapy notes?

9 A. Correct.

10 Q. And the form that misidentified the

11 doctor as Jose Soha, correct?

12 A. Correct.

13 Q. So as of April 30th, the district was

14 still requesting that Ms. Melton sign a form

15 with multiple mistakes in it even after the

16 district had been alerted to those mistakes,

17 correct?

18 A. Yes.

19 Q. Okay. Dr. Wade, have you ever signed

20 a form for release of personal information that

21 you knew to have mistakes in it?

22 A. I'm sure I would have corrected the

23 mistakes or got an alternate form.

24 MR. CARMAN: So I'd like to ask for a

25 quick ten-minute break so I can organize any

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1 Board approval be required to suspend an

2 employee without pay?

3 A. There are not many circumstances in

4 which that would take place. Typically, for the

5 purposes of any disciplinary hearing, employees

6 are suspended with pay. The 913 process is one

7 of the areas where someone is suspended without

8 pay.

9 Q. You said "one of the areas." Is there

10 a list somewhere?

11 A. There isn't a list. I mean, it's the

12 only one that comes to mind that I'm aware of.

13 Q. So if there's no list anywhere

14 indicating which disciplinary scenarios warrant

15 suspension without pay, how would an employee

16 know that a given conduct would result in their

17 suspension without pay?

18 A. It's a matter of regulation, but they

19 wouldn't necessarily know that.

20 Q. When you say "regulation," do you mean

21 state regulation?

22 A. Correct, state law, state regulation.

23 Q. I'm a little confused here because you

24 said there's no list, but you also said it's a

25 matter of regulation as to whether an employee

1 final questions if that's okay. And then

2 we'll come back and I will quickly wrap up.

3 Is that okay with you, Mr. Rushfield?

4 MR. RUSHFIELD: Sure.

5 MR. CARMAN: Dr. Wade?

6 THE WITNESS: Yes, that's fine with

7 me. I'm going to stay on.

8 MR. CARMAN: Sure. I have the time at

9 2:53. Luanne, is that what you've got?

10 THE REPORTER: Yeah, that's what I

11 have.

12 MR. CARMAN: So we'll come back at

13 3:03-ish, 3:05.

14 (Recess taken.)

15 BY MR. CARMAN:

16 Q. Dr. Wade, I believe you testified

17 earlier that when suspending an employee's pay

18 for failure to attend a 913 examination, Board

19 approval is not required, correct?

20 A. That's my understanding, yes.

21 Q. Okay. Are there district policies in

22 place governing different scenarios for who must

23 approve suspension without pay?

24 A. No.

25 Q. Okay. So in some circumstances, would

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1 would be suspended without pay. Can you explain

2 how those are consistent?

3 MR. RUSHFIELD: Objection. I'm not

4 sure this witness is qualified to answer

5 this question. I could answer the question,

6 but I'm not a witness in this case.

7 A. When you say "policy," I think of a

8 Board policy. I'm not aware that there is a

9 Board policy about that. But there are laws

10 that govern this, and so typically the attorney

11 for any defendant, which typically would come

12 from the union, would explain --

13 (Technical interruption.)

14 THE WITNESS: Am I back?

15 MR. RUSHFIELD: You were gone for a

16 couple of seconds. I think the last thing

17 you said was something about -- I think it

18 was the attorney for the union would explain

19 that.

20 A. Typically, if there was a question

21 like that, attorneys who are familiar with

22 public sector school law would explain that

23 either from a union representative perspective

24 or from the district perspective.

25 Q. When you say "explain that," explain

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1 that to who?

2 A. Well, the attorney for the district
3 would explain it to district employees. And
4 anyone who was being suspended typically would
5 have someone from their union explain it to
6 them.

7 Q. Do you know if the district conducts
8 any sort of regular training on 913 examinations
9 or 3020-a proceedings?

10 MR. RUSHFIELD: Objection to form.
11 It's in the conjunctive. You can attempt to
12 answer it.

13 A. Since I have been here, the district
14 has not held any workshops on those issues.

15 Q. When a 3020-a proceeding is initiated
16 against an employee, what is the union's role in
17 that proceeding?

18 MR. RUSHFIELD: Object to form. I'm
19 not sure this witness is qualified to answer
20 the question, but you can attempt to.

21 A. Typically, whenever there is a
22 concern, the union is involved as a
23 representative of the employee.

24 Q. So in your experience, has a union
25 ever defended an employee in a 3020-a

1 proceeding?

2 A. Typically, an attorney from the union
3 is typically the representative of an individual
4 in a proceeding.

5 Q. When you say "a proceeding,"
6 specifically you mean a 3020-a proceeding?

7 A. Correct.

8 Q. Or I believe it was a Section 75
9 proceeding you mentioned earlier?

10 A. Correct, which is for civil service
11 employees.

12 Q. And the union that would represent the
13 employee would be whatever union the employee is
14 a member of, correct?

15 A. Correct.

16 Q. Other than Ms. Melton, are you aware
17 of any instance in which the Poughkeepsie City
18 School District has suspended an employee
19 without pay for failing to attend a 913
20 examination?

21 MR. RUSHFIELD: Can you read that back
22 to me? I'm sorry. I got distracted.

23 MR. CARMAN: Sure.

24 Q. Other than Ms. Melton, are you aware
25 of any instance in which the Poughkeepsie City

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1 School District has ever suspended an employee
2 without pay for failing to attend a 913
3 examination?

4 A. Since July of 2020, I'm not aware of
5 any employee being suspended without pay because
6 of a refusal to go to a 913 proceeding.

7 Q. Since July of 2020, are you aware of
8 any instance other than Ms. Melton where the
9 district has ordered an employee to undergo a
10 913 examination?

11 A. I'm not aware of any employee being
12 ordered to go to a 913 proceeding since July of
13 2020.

14 MR. CARMAN: Okay. I have no further
15 questions.

16 MR. RUSHFIELD: Actually, I just have
17 a couple of things, maybe just one thing.
18 Can you bring up Exhibit 14?

19 MR. CARMAN: Sure.

20 MR. RUSHFIELD: I don't know if the
21 witness can pull it up or --

22 THE WITNESS: I could not open it.

23 MR. RUSHFIELD: If you would be so
24 kind, Counsel, as to share it.

25 Great, exactly where I want to be too.

EXAMINATION

2 BY MR. RUSHFIELD:

3 Q. You were asked questions by counsel
4 for the plaintiff about the authorization we
5 previously provided her referred to in Kate
6 Reid's email. Do you know whether Kate Reid's
7 firm ever provided a different authorization to
8 Ms. Melton from the one that you provided that
9 had the incorrect information?

10 A. I do not know that.

11 Q. One way or the other?

12 A. One way or the other.

13 MR. RUSHFIELD: Okay. Give me a
14 moment because that may be the only thing I
15 was going to ask. That's all. That's the
16 only thing I had.

17 MR. CARMAN: I have nothing further.

18 MR. RUSHFIELD: Thank you for your
19 time, Dr. Wade, and I will be seeing counsel
20 again on the 29th.

21 (Deposition concluded at 3:15 p.m.)

22 * * * * *

1

CERTIFICATE OF OATH

2

3 STATE OF OHIO

4 COUNTY OF CUYAHOGA

5 I, Luanne K. Howe, Notary Public, State of

6 Ohio, certify that TIMOTHY WADE, Ph.D., remotely

7 appeared before me on the 18th day of June,

8 2021, and was duly sworn.

9 Signed this 1st day of July, 2021

10

11 Luanne K Howe

12

13 Luanne K. Howe

14 Notary Public, State of Ohio

15 Commission No.: 2019-RE-796049

16 Commission Expires: October 7, 2024.

17

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1

CERTIFICATE OF REPORTER

2 STATE OF OHIO

3 COUNTY OF CUYAHOGA

4 I, Luanne K. Howe, Notary Public in and for

5 the State of Ohio, do hereby certify that I was

6 authorized to and did stenographically report

7 remotely the deposition of TIMOTHY WADE, Ph.D.;

8 and that the foregoing transcript is a true

9 record of my stenographic notes.

10 I FURTHER CERTIFY that I am not a relative,

11 employee of attorney, or counsel of any of the

12 parties, nor am I a relative or employee of any

13 of the parties' attorney or counsel connected

14 with the action, nor am I financially interested

15 in the action.

16 DATED this 1st day of July, 2021, at

17 Cleveland, Cuyahoga County, Ohio.

18 Luanne K Howe

19

20 Luanne K. Howe

21 Court Reporter and Notary Public

22 My commission expires October 7, 2024.

23

24

25

1

ERRATA SHEET

2 Case Name:

3 Deposition Date:

4 Deponent:

5 Pg. No. Now Reads Should Read Reason

6

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22 SUBSCRIBED AND SWORN BEFORE ME

23 THIS DAY OF , 2021.

24

25 (Notary Public) MY COMMISSION EXPIRES:

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